IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.2869 OF 2004

WITH

CIVIL APPLICATION NO.2811 OF 2004

IN

WRIT PETITION NO.4111 OF 2003

Daudayal D.Agarwal ...Applicant

Versus

Bhaichandradas Durgacharan

Das & Ors. ...Respondents

.....

Shri A.Y.Sakhare, Sr.Counsel with Mrs.Varsha Palav for Applicant.

Shri P.K.Dhakephalkar with Shri P.M.Shah for Respondents.

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CORAM: A.M.KHANWILKAR, J.

DECEMBER 3, 2004.

P.C.

1. Both these applications can be disposed of together. This Court had passed a conditional

order on 16th October 2003, requiring the Writ Petitioner to serve the unserved Respondents within specified time, failing which, the Writ Petition to stand dismissed for non-prosecution in terms of the order without further reference to the Court. That order remained uncomplied. As a consequence of non-compliance of the said order, the Writ Petition stood dismissed for non-prosecution.

2. Now both these Applications filed, in substance, pray that the conditional order as was passed, be recalled and the Writ Petition be restored to the file to its original number, so that the Writ Petitioner can pursue the same on merits. Learned Counsel for the Applicant/Writ Petitioner makes oral request that the Petitioner be permitted to delete Respondent Nos.2 and 3 from the array of parties in the Writ Petition, at his risk. Accordingly, for the reasons stated in the Application, coupled with the statement made on behalf of the Writ Petitioner/Applicant that he be allowed to delete Respondent Nos.2 and 3 from the array of parties in Writ Petition, the conditional order is recalled and Writ Petition is restored to

the file to its original number, on condition that the Applicant to pay cost of Rs.5,000/- (Rupees Five Thousand) to Respondent No.1, who would be the sole Respondent in the Writ Petition. In other words, by this order, both the Applications are allowed to the extent of restoring the Writ Petition No.4111 of 2003 to the file to its original number and till the said Writ Petition is heard by the appropriate Court, the parties to maintain status-quo with regard to the suit property.

3. Applicant to pay cost, as quantified above, to the Respondent No.1, before Writ Petition is taken up for hearing before the regular bench, in any case, within one week from today. Liberty to apply for listing of Writ Petition No.4111 of 2003 before the regular Court. Amendment be carried out within one week.

4. Applications allowed on the above terms.

A.M.KHANWILKAR, J.